UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

PATRICK L. ESLICK, Plaintiff, v. STATE OF WASHINGTON AND JASON P. AEBISCHER, and CITY OF MOSES LAKE AND TRAVIS RUFFIN AND JOSE PEREZ, Defendants.	NO. 2:21-CV-0282-TOR ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND GRANTING CITY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

BEFORE THE COURT are Plaintiff's Motion for Partial Summary Judgment (ECF No. 43) and City Defendants' Motion for Summary Judgment (ECF No. 50). These matters were submitted for consideration with oral argument on June 9, 2022. Plaintiff Patrick L. Eslick, proceeding *pro se*, appeared on behalf of himself. Kirk A. Ehlis appeared on behalf of City Defendants. Taylor M. Hennessey appeared on behalf of State Defendants. The Court has reviewed the record and files herein, considered the parties' oral arguments, and is fully

informed. For the reasons discussed below, Plaintiff's Motion for Partial Summary Judgment (ECF No. 43) is DENIED, and City Defendants' Motion for Summary Judgment (ECF No. 50) is GRANTED.

BACKGROUND

This matter relates to events following a traffic stop in July 2019. The following facts are not in dispute, except where noted.

Sometime between 1:00AM and 2:00AM on July 29, 2019, Plaintiff was pulled over in Moses Lake, Washington for driving without his headlights turned on. ECF Nos. 43-1 at 2, ¶ 2; 51 at 2, ¶ 1. After an interaction with Defendants Officer Perez and State Trooper Aebischer, Plaintiff was placed under arrest for suspected driving under the influence (DUI). ECF Nos. 43-1 at 7, ¶ 15; 51 at 6, ¶ 23. Defendant Officer Ruffin was also on scene during the interaction; he was riding along with Officer Perez as part of Officer Perez's training. ECF No. 52 at 2, ¶ 5. Officer Ruffin's role was primarily to observe Officer Perez's interactions with the public. *Id*. at 3, ¶ 6. Plaintiff was not ultimately charged with DUI but was cited for Negligent Driving 1st Degree. ECF No. 51 at 8, ¶ 34. The citation was later dismissed. ECF No. 1-1 at 49.

On July 1, 2021, Plaintiff filed a tort claim with the Washington Department of Enterprise Services, Office of Risk Management, for alleged tortious conduct stemming from the July 2019 traffic stop. *Id*. at 50. Plaintiff did not properly file

a tort claim with the City of Moses Lake. ECF No. 50 at 9, ¶ 38. On September 24, 2021, Plaintiff filed the operative Complaint in this matter, asserting state and federal law violations. ECF No. 1. On December 22, 2022, the Court dismissed Defendants Grant County and Commissioner Gigliotti from the action, finding Plaintiff had failed to state claims against those defendants. ECF No. 34. The remaining defendants include the State of Washington, State Trooper Aebischer, the City of Moses Lake, and Moses Lake Police Officers Ruffin and Perez (collectively "Defendants").

In the present motions, Plaintiff seeks partial summary judgment as to the remaining Defendants' liability for claims asserted pursuant to 42 U.S.C. §§ 1983 and 1985, 18 U.S.C. § 2, and various state laws; Defendants City of Moses Lake, Officer Ruffin, and Officer Perez ("City Defendants") seek summary judgment as to all claims asserted against them. ECF Nos. 43, 50. Defendants State of Washington and Trooper Aebischer ("State Defendants") have responded to both motions and reserve the right to file their own motion for summary judgment in the future. ECF Nos. 47, 57.

DISCUSSION

I. Legal Standard

The Court may grant summary judgment in favor of a moving party who demonstrates "that there is no genuine dispute as to any material fact and that the

movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In ruling on a motion for summary judgment, the court must only consider admissible evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764 (9th Cir. 2002). The party moving for summary judgment bears the initial burden of showing the absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the non-moving party to identify specific facts showing there is a genuine issue of material fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Id*. at 252.

For purposes of summary judgment, a fact is "material" if it might affect the outcome of the suit under the governing law. *Id.* at 248. Further, a dispute is "genuine" only where the evidence is such that a reasonable jury could find in favor of the non-moving party. *Id.* The Court views the facts, and all rational inferences therefrom, in the light most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007). Summary judgment will thus be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

A. 42 U.S.C. § 1983

A cause of action pursuant to 42 U.S.C. § 1983 may be maintained "against any person acting under the color of law who deprives another 'of any rights, privileges, or immunities secured by the Constitution and laws' of the United States." *Southern Cal. Gas Co., v. City of Santa Ana,* 336 F.3d 885 (9th Cir. 2003) (citing 42 U.S.C. § 1983). The rights guaranteed by § 1983 are "liberally and beneficently construed." *Dennis v. Higgins,* 498 U.S. 439, 443 (1991).

Plaintiff seeks summary judgment as to Defendants' liability arising under § 1983 for civil rights violations including failure to train, false arrest, and due process violations. ECF No. 1 at 16–17, at 21–25. State Defendants oppose Plaintiff's motion on the grounds that they are not "persons" for the purposes of a § 1983 claim. ECF No. 47 at 7. City Defendants argue Plaintiff has failed to establish the existence of an official policy or custom, or a failure to train City employees, that leads to civil rights violations. ECF No. 44 at 7–9. City Defendants also move for summary judgment on all claims asserted against them arising under § 1983. ECF No. 50 at 6–15.

1. State Defendants

As an initial mater, it is well settled that states, state agencies, and state officials acting in their official capacities are not susceptible to suits under 42 U.S.C. § 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989).

Here, the State of Washington and Trooper Aebischer acting in his official capacity are state actors and are therefore not "persons" susceptible to suit under § 1983. Plaintiff is not entitled to summary judgment regarding State Defendants' liability under § 1983. Consequently, the Court will address Plaintiff's remaining § 1983 claims only as to Defendants City of Moses Lake and Officers Perez and Ruffin.

2. City of Moses Lake—Failure to Train

Plaintiff alleges Defendant City of Moses Lake failed to properly train its law enforcement officers in DUI and arrest procedures, leading to Officers Ruffin and Perez violating Plaintiff's Fourth and Fourteenth Amendment rights. ECF Nos. 43 at 13–16; 1 at 21–25, ¶¶ 4.18–4.27. Defendants assert Plaintiff has not established a failure to train claim under § 1983. ECF No. 50 at 6–8.

"In order to set forth a claim against a municipality under 42 U.S.C. § 1983, a plaintiff must show that the defendant's employees or agents acted through an official custom, pattern or policy that permits deliberate indifference to, or violates, the plaintiff's civil rights; or that the entity ratified the unlawful conduct." *Shearer v. Tacoma Sch. Dist. No. 10*, 942 F. Supp. 2d 1120, 1135 (W.D. Wash. 2013) (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–91 (1978)). As such, a policy, practice, or custom can be established in three ways: (1) an employee acts pursuant to an expressly adopted official policy, (2) an employee acts pursuant to a

longstanding practice or custom, or (3) an employee acts as a final policymaker. *Lytle v. Carl*, 382 F.3d 978, 982–83 (9th Cir. 2004).

Absent a formal governmental policy, a plaintiff must show a "longstanding practice or custom which constitutes the standard operating procedure of the local governmental entity." *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996) (quoting *Gillette v. Delmore*, 979 F.2d 1342, 1346–47 (9th Cir. 1992)). "Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy." *Trevino*, 99 F.3d at 918; *see also Meehan v. Cty. of Los Angeles*, 856 F.2d 102, 107 (9th Cir. 1988) (finding two incidents insufficient to establish custom).

Additionally, in limited circumstances, a local government's failure to train its employees on their legal duties not to violate citizens' rights may rise to the level of a policy or custom for the purposes of a § 1983 claim. *Connick v. Thompson*, 563 U.S. 51, 61 (2011). However, "[a] municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." *Id*. To succeed on a § 1983 claim alleging a failure to train, the challenged action must amount to "deliberate indifference to the rights of persons with whom the untrained employees come into contact." *Id*. (internal brackets and citation omitted).

Deliberate indifference is a high standard that requires proof of a municipal actor's disregard for a known or obvious consequence of his action. *Id*. Thus, when local government policymakers are on actual or constructive notice that a particular omission in their training program causes employees to violate citizens' constitutional rights, the local government may be deemed deliberately indifferent if the policymakers continue to retain the same training program. *Id*.

Here, Plaintiff's failure to train claim is premised on two of his own experiences with the Moses Lake Police Department: the July 2019 traffic stop and an incident that occurred in March 2015. ECF Nos. 43 at 13–16; 1 at 21, ¶ 4.19. City Defendants argue Plaintiff has failed to establish an official policy or custom used by the City of Moses Lake that permits deliberate violations of citizens' constitutional rights. ECF No. 50 at 8. City Defendants further argue Plaintiff has failed to meet the heightened standard required to establish deliberate indifference because Plaintiff has presented no facts indicating there is a pattern or practice of violating constitutional violations that would put the City of Moses Lake on notice of a need to further train its law enforcement officers. *Id*.

The Court agrees. Based on the evidence in the record, Plaintiff has failed to establish a pattern or practice of "sufficient duration, frequency and consistency" to succeed on a § 1983 claim for a failure to train. *Trevino*, 99 F.3d at 918. Plaintiff has not provided any evidence that the Moses Lake Police Department's

training program regularly leads to civil rights violations, or evidence that the City of Moses Lake had knowledge of past or ongoing constitutional violations arising from an inadequate training program. Rather, Plaintiff cites only to his own interpretation of the recorded conversation between Officers Perez and Ruffin and Trooper Aebischer during the 2019 traffic stop to conclude their training was inadequate, and to an incident that occurred in March 2015. ECF Nos. 43-2 at 2–6; 1 at 21, ¶ 4.19. The latter reference is nearly devoid of any facts or context, and therefore, it is difficult to determine whether that incident is even relevant to Plaintiff's claim. In any event, one or even two isolated experiences, and Plaintiff's own interpretation of the events, are insufficient to establish a failure to train under § 1983. *Meehan*, 856 F.2d at 107. Accordingly, Plaintiff's motion for summary judgment is denied and the Court finds City Defendants are entitled to summary judgment as a matter of law.

3. Officer Perez—False Arrest, Qualified Immunity

Plaintiff alleges Officer Perez confined him against his will and without probable cause in violation of Plaintiff's Fourth and Fourteenth Amendment rights. ECF No. 1 at 16–17, ¶¶ 4.1–4.3; 43 at 7. City Defendants argue Officer Perez is entitled to qualified immunity under § 1983 because Plaintiff's arrest was lawful. ECF No. 44 at 5–7. City Defendants move for summary judgment on the grounds that Plaintiff's claim is time barred. ECF No. 50 at 9–15.

"Arrest by police officers without probable cause violates the Fourth Amendment's guarantee of security from unreasonable searches and seizures, giving rise to a claim for false arrest under § 1983." *Caballero v. City of Concord*, 956 F.2d 204, 206 (9th Cir. 1992). However, such claims are subject to the applicable statute of limitations. "State law governs the statute of limitations period for § 1983 suits and closely related questions of tolling." *Douglas v. Noelle*, 567 F. 3d 1103, 1109 (9th Cir. 2009). A cause of action accrues from the date the plaintiff knew or should have known the factual basis for the claim. *Allen v. State*, 118 Wash. 2d 753, 758 (1992). In Washington, the statute of limitations for a § 1983 claim premised on false arrest is two years. RCW 4.16.100(1). However, the statute of limitations will toll under certain circumstances. Relevant here, the statute of limitations tolls for sixty days once a tort claim is filed with the agent of the local government entity to be sued. RCW 4.96.020(4).

The actions giving rise to Plaintiff's false arrest claim occurred on July 29, 2019. ECF No. 43 at 2. Thus, under Washington law, Plaintiff must have commenced his § 1983 false arrest claim by July 29, 2021, unless he first filed a tort claim with the City of Moses Lake. It is undisputed that Plaintiff did not properly file a tort claim with the City of Moses Lake. ECF Nos. 50 at 10; 60 at 13–15. Plaintiff argues he attempted to file his tort claim with the City of Moses Lake but the City did not accept the filing. ECF No. 60 at 13–14. Plaintiff did not

submit any evidence of the claim he allegedly filed. Moreover, a failure to comply with the filing requirements cannot overcome the statutory prerequisite to filing suit against the City. Consequently, when Plaintiff commenced this action on September 24, 2021, the statute of limitations, which began to run on July 29, 2019, had expired. Plaintiff's claim for § 1983 liability premised on false arrest is barred by Washington's two-year statute of limitations. City Defendants are entitled to summary judgment as a matter of law. The Court need not reach the issue of qualified immunity.

B. 42 U.S.C. § 1985

Plaintiff alleges Officers Perez and Ruffin and Trooper Aebischer engaged in a conspiracy to falsely arrest and unlawfully imprison Plaintiff in violation of 42 U.S.C. § 1985. ECF No. 43 at 2. City Defendants argue Plaintiff has failed to establish a race or class-based animus for the alleged conspiracy and move for summary judgment on the same grounds. ECF Nos. 44 at 11–12; 50 at 15–16. State Defendants oppose Plaintiff's motion for the same reason. ECF No. 47 at 10.

Section 1985 provides three causes of action. *See Deleo v. Rudin*, 328 F. Supp. 2d 1106, 1112–13 (D. Nevada 2004). Plaintiff does not specify in the Complaint which cause of action he is pursuing. However, based on the alleged facts, it appears Plaintiff is asserting a claim under § 1985(3), which provides a cause of action against one or more conspirators who deprive an individual of

equal protection of the laws. 42 U.S.C. § 1985(3); *Bretz v. Kelman*, 773 F.2d 1026, 1027–28 (9th Cir. 1985). The Supreme Court has held that "the language of § 1985(3) . . . must be limited to cases alleging some racial or class-based invidious discrimination." *Id*. (citing *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971)).

Defendants argue Plaintiff has not alleged any facts or provided any evidence that the law enforcement officers involved were motivated by race-based or class-based discrimination. ECF Nos. 50 at 16; 47 at 10. Plaintiff appears to assert he was subjected to class-based discrimination when Defendants categorized him as "an impaired driver." ECF No. 60 at 11–12. Plaintiff does not cite to any authority, and the Court is not aware of any, that recognizes categories of drivers as a protected class. Plaintiff does not provide any other evidence from which a trier of fact could reasonably find Plaintiff was discriminated against based on membership in a protected class. Consequently, Plaintiff is not entitled to summary judgment on the issue and the Court finds City Defendants are entitled to summary judgment as a matter of law.

C. 18 U.S.C. § 2

City Defendants move for summary judgment on Plaintiff's claim under 18 U.S.C. § 2, arguing the statute does not create a private cause of action. ECF No. 50 at 17. Plaintiff did not respond to Defendants' argument.

Title 18 of the United States Code contains criminal statutes, which do not ordinarily provide private causes of action. "[C]ourts may infer such private causes of action for damages from . . . criminal statutes only when such inference is consistent with the evident legislative intent, and of course, with the effectuation of the purposes intended to be served [by] the Act." *Savini Constr. Co. v. Crooks Bros. Constr. Co.*, 540 F.2d 1355, 1358 (9th Cir. 1974) (internal quotation marks and citation omitted). Section 2 is a general criminal statute establishing criminal liability for those who act as principals in the commission of a crime. 18 U.S.C. § 2. There is no legislative intent indicating 18 U.S.C. § 2 could be used to assert a private cause of action. Therefore, Defendants are entitled to summary judgment as a matter of law.

D. State Law Claims

Plaintiff asserts several state law claims including infliction of emotion distress, unlawful imprisonment, false arrest, and malicious prosecution. ECF No. 1 at 25–27. "Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). A federal court may exercise original jurisdiction over cases involving a question of federal law or between parties of diverse citizenship. 28 U.S.C. §§ 1331, 1332. A federal court may also exercise supplemental jurisdiction over pendent claims "that are so related to the claims in the action within such original jurisdiction that they form

part of the same case or controversy." 28 U.S.C. § 1367(a). However, if a district court has dismissed all of the claims over which it has original jurisdiction, it may decline to exercise supplemental jurisdiction over a related claim. 28 U.S.C. § 1367(c)(3).

Having dismissed the federal claims asserted against City Defendants, and considering the values of judicial economy, convenience, fairness, and comity, the Court declines to exercise supplement jurisdiction over Plaintiff's state law claims asserted against the City of Moses Lake and Officers Perez and Ruffin. *See Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988), *superseded by statute on other grounds as stated in Stanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010) (citing *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966)).

ACCORDINGLY, IT IS HEREBY ORDERED:

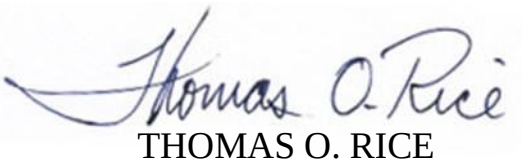
1. Plaintiff's Motion for Partial Summary Judgment (ECF No. 43) is **DENIED**.
2. City Defendants' Motion for Summary Judgment (ECF No. 50) is **GRANTED**.
3. The federal claims asserted against Defendants City of Moses Lake, Travis Ruffin, and Jose Perez are **DISMISSED with prejudice**. Any

state law claims asserted against these Defendants are **DISMISSED without prejudice**.

4. Defendants City of Moses Lake, Travis Ruffin, and Jose Perez are terminated from the docket.

The District Court Executive is directed to enter this Order and Judgment accordingly and furnish copies to counsel.

DATED June 9, 2022.



THOMAS O. RICE
United States District Judge